

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RAFAEL BERNARDO ALVAREZ,

Plaintiff,

v.

CLARK COUNTY, et al,

Defendant.

Case No. 2:22-cv-00261-ART-EJY

ORDER

Before the Court are a Motion to Add Clark County to the List of Defendants of the 1st Amended Complaint (ECF No. 10), a Motion for Preliminary Injunction (ECF No. 14), and a Motion for Leave to Withdraw this Action (ECF No. 15.) The Court now dismisses Mr. Alvarez's case without prejudices and issues a \$402.00 refund.

The motion to withdraw the action acknowledges that the claims that Mr. Alvarez brought were, in substance, a petition for habeas corpus. Mr. Alvarez requests the return of his \$402.00 filing fee applicable to civil rights actions because he needs that money to survive. The Court previously ordered dismissal without prejudice of Claims 2 through 4 and allowed Mr. Alvarez to refile for relief through a habeas petition. The Court dismissed Mr. Alvarez's Fourth Amendment claim with leave to amend. (ECF No. 11.) That claim was insufficiently coherent for the Court to assess the merits. (ECF No. 4.).

The Court ultimately agrees with Mr. Alvarez that the entirety of the action was in substance a petition for writ of habeas corpus and thus barred by *Heck v. Humphrey*, 512 U.S. 477, 481 (1994). The Court thus finds that it is appropriate to return the \$402.00 of the filing fee for a civil action that Mr. Alvarez paid (ECF

1 No. 8.). Had Mr. Alvarez been aware that his action was in substance a petition
2 for a writ of habeas corpus he would have only been assessed a \$5.00 filing fee.

3 IT IS THEREFORE ORDERED that Plaintiff's motions to dismiss (ECF No.
4 15) is GRANTED. This action is dismissed without prejudice.

5 IT IS FURTHER ORDERED that Plaintiff's Motion to Add Clark County to
6 the List of Defendants of the 1st Amended Complaint (ECF No. 10) and Motion for
7 Preliminary Injunction (ECF No. 14) are denied as moot.

8 IT IS FURTHER ORDERED that the Clerk of the Court issue a refund to
9 Plaintiff (Rafael Bernardo Alvarez, NDOC inmate #1207192) in the amount of
10 \$402.00.

11 IT IS FURTHER ORDERED that the Clerk of the Court shall send a copy of
12 this order to the Finance Division of the Clerk's Office. The Clerk of the Court
13 shall also send a copy of this order to the attention of the Chief of Inmate Services
14 for the Nevada Department of Corrections, P.O. Box 7011, Carson City, NV
15 89702.

16 IT IS FURTHER ORDERED that the clerk of the Court shall enter judgment
17 accordingly.

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19 DATED THIS 8th Day of July 2022.

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22 ANNE R. TRAUM
23 UNITED STATES DISTRICT JUDGE
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